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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,163	11/13/2001	Hiroaki Takahata	Q66991	6425
7590 04/01/2004				
SUGHRUE MION, PLLC 2100 Pennsylvania Avenue, NW Washington, DC 20037-3213			EXAMINER BISSETT, MELANIE D	
			ART UNIT	PAPER NUMBER
			1711	

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/987,163	TAKAHATA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Melanie D. Bissett	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. The request filed on 29 December 2003 for Continued Examination under 37 CFR 1.114 based on parent Application No. 09/987,163 is acceptable and an RCE has been established. An action on the RCE follows.
2. The rejections based on 35 USC 103 have been altered as necessitated by amendment. New rejections have been added.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3-4, and 6-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Willham et al.
5. Willham discloses a heat sealable and peelable packaging film comprising a polyester blend layer (abstract). Examples show layered films having a copolyester blend layer and a PET copolyester layer. Examples 1 and 3 show the polyester blend comprising an ethylene/methyl acrylate/glycidyl methacrylate copolymer, where the ethylene monomer is present in an amount of 69.25 wt%. The PET layer is inherently a “sealing layer” since it is thermoplastic and is otherwise considered a heat sealing

polymer. The reference teaches PET layers having thicknesses as low as 0.0125 mm (12.5  $\mu$ m) [0033].

6. Regarding the claims drawn to "lid members", it is the examiner's position that the "lid member" in the preamble of the claim is an intended use of the invention. It is the examiner's position that the films of Willham would inherently be useful for lidding containers, since the materials are heat sealable and shown to be useful for sealing food and non-perishable products [0034]. Thus, a film to be used as a lid member would be indistinguishable from a "lid member" of the applicant's claim.

#### ***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winter ('061) in view of FDA.

9. Winter discloses a multilayer film that is easily peelable, where the film is used in food container applications as a peelable lid (col. 15 lines 37-48). The film contains a sealing layer of polyester resin adjacent to a layer of EMA or EVA, where the polar components of the EMA or EVA layers are included to promote adhesion (col. 4 lines 55-66; col. 9 lines 4-11; col. 6 line 59-col. 7 line 8). Examples show polyester layer thicknesses of 5  $\mu$ m (example 2). However, Winter does not teach the ethylene contents of the EMA copolymers to be used in the invention. The FDA cites that, when EMA polymers are used in articles intended to contact food, no more than 25% by

weight of the copolymer should be derived from methyl acrylate (§177.1340). This allows for  $\geq 75\%$  by weight of ethylene comonomer. Since Winter teaches that the polar monomers serve to increase adhesion and the FDA requires that the copolymers contain at least 75% by weight of ethylene, it is the examiner's position that it would have been prima facie obvious to choose an EMA copolymer with 75-80% ethylene to optimize food safety and adhesion properties.

### ***Response to Arguments***

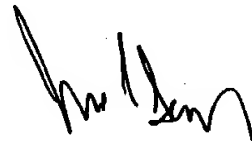
10. Applicant's arguments with respect to claims 1 and 3-7 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie D. Bissett whose telephone number is (571) 272-1068. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdb



**James J. Seidleck**  
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